ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

August 9, 2001

Magalie R. Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation; CC Docket Nos. 96-98, 01-138

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceeding of an oral presentation made on August 9, 2001. The presentation was made by Jonathan Askin and Teresa Gaugler of the Association for Local Telecommunications Services ("ALTS"); Dick Metzger of Focal Communications; and Steven Augustino and Brad Mutschelknaus of Kelley Drye & Warren LLP. The presentations were made to Dorothy Attwood, Jeff Carlisle, Michelle Carey, Jeremy Miller, Julie Veich, and Scott Bergmann.

During the presentation, the parties discussed issues related to the availability of enhanced extended links ("EELs") and Verizon's broadband loop provisioning practices. The attached written materials were discusses and presented to the Commission staff.

Pursuant to the Commission's rules, an original and a copy of this notice of *ex parte* contact are being submitted for inclusion in the public record of the above-referenced proceedings. If you have any questions about this matter, please contact me at 202-969-2587.

Respectfully submitted,

/s/

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EEL Conversions and Verizon's Broadband Loop Provisioning

The ILECs are currently making two concerted efforts to stop the CLECs from obtaining broadband facilities at TELRIC rates.[1] First, the ILECs have invented a EELs conversion prohibition that does not appear in either the Joint Ex Parte of February 29, 2000, or in the Supplemental Clarification Order. Second, Verizon has recently concocted the theory that it is not obligated to perform loop conditioning in order to implement CLEC orders for broadband loops. These brazen claims are utterly unfounded, plainly anticompetitive, and should be halted immediately.

The Phantom " MUXing" Prohibition on EEL Conversions -- There is no prohibition that prevents qualifying access circuits from conversion to EELs simply because they reside upon facilities that also carry non-qualifying circuits. The ILECs insist this phantom prohibition is part of the " co-mingling" prohibition referenced in paragraph 28 of the Supplemental Clarification Order. But, as detailed in ex partes filed July 27' 2001, and August 2, 2001, paragraph 28 refers to the Joint Ex Parte of February 29, 2000. That document, submitted by CLECs and ILECs, created three safe harbors, each placing limits on the mixture of local and interexchange traffic that could be included within a circuit in order for it to qualify, and each prohibiting the attachment of UNEs to tariffed services. Nowhere in that document is there any prohibition on the conversion of qualifying circuits that happen to be muxed with non-qualifying circuits.

Nor is there any reason why such a restriction should exist. The three safe harbors were represented to the Commission by the ILEC and CLEC signatories as an adequate temporary limitation on the ILECs' potential loss of access revenues. Any claim now by the ILECs that additional revenue protections are somehow necessary would repudiate the compromise struck in the Joint Ex Parte, and incorporated in the Supplemental Clarification Order. And, obviously, there is no network or billing reason that requires the physical sequestration of EELs and access services, since the ILECs have long been able to provision, maintain, repair, and bill multiple services carried over the same facility.

The Chief of the Common Carrier should immediately issue a letter stating that the Supplemental Clarification Order does not contain any prohibition on converting

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[1] Other meritless obstructions raised by ILECs to EELs conversions include BellSouth's claim that converted facilities must pay the leaky private line surcharge, SBC's insistence that its dangerous conversion process must employed for conversion, unwarranted audits, etc.

qualifying access circuits residing on the same facilities as non-qualifying circuits.

Verizon's Claim that It Need Not - and Will Not - Condition Lines in Order to Provide Broadband UNE Loops -- Verizon now asserts it will only provision conditioned loops where such loops already exist.[2] This is utter nonsense. Verizon's corporate predecessor GTE raised precisely this claim in the UNE Remand proceeding, and this Commission flatly rejected it:[3]

> " 173. **GTE contends that the Eighth Circuit, in the *Iowa Utils. Bd. v. FCC* decision, overturned the rules established in the *Local Competition First Report and Order* that required incumbents to provide competing carriers with conditioned loops capable of supporting advanced services even where the incumbent is not itself providing advanced services to those customers. We disagree.** Although the Eighth Circuit overturned certain rules to the extent those rules required incumbent LECs to provide access to unbundled network elements at levels of quality superior to those the incumbent LECs provide themselves, the court also expressly affirmed the Commission's determination that section 251(c)(3) requires incumbent LECs to provide modifications to their facilities to the extent necessary to accommodate access to network elements. We find that loop conditioning, rather than providing a 'superior quality' loop, in fact enables a requesting carrier to use the basic loop. Because competitors cannot access the loop with all its native 'features, functions, and capabilities' unless it has been stripped of accreted devices, we conclude that loop conditioning falls within the definition of the loop network element, and is also consistent with the Eighth Circuit opinion." (Emphasis supplied; footnotes omitted)

Verizon offers only one argument in defense of its new practice (which apparently was instituted in June, and only publicly announced in a July 24, 2001, letter on Verizon's wholesale markets Website) in its August 6, 2001, reply comments in the Pennsylvania 271 proceeding. Verizon cites to paragraph 324 of the UNE Remand Order, where the Commission declined to require the ILECs to build facilities, such as SONET rings, that the ILEC does not employ itself. Verizon's reply comments make no mention whatsoever of paragraph 173 from the same order, quoted above, where the precise issue at hand here was raised by its corporate predecessor, and rejected by the Commission.

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[2] See the attached July 24, 2001, from Verizon's wholesale Website (http://128.11.40.241/east/wholesale/resources/master.htm; available under " Industry letters" and " July."

[3] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, 15 F.C.C. Rec. 3696, ¶ 173.

This issue is strictly res judicata between Verizon and the CLECs. Verizon's 271 application for Pennsylvania should be rejected, and Verizon instructed to halt its illegal denial of conditioned loops immediately.